Supreme Court, U.S.
FILED
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No. 93-107

In The

Supreme Court of the United States

October Term, 1993

C. LOUIS NOACK and CAROLYN S. NOACK,

Petitioners,

v.

STATE FARM FIRE AND CASUALTY COMPANY and JIMMY YOUNG,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION

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RULE 29.1 LISTING

State Farm Fire and Casualty Company is owned by State Farm Mutual Automobile Insurance Company. It has no non-wholly owned subsidiaries.

REASONS FOR DENYING THE WRIT

I. Petitioners Present No Compelling Reason To Review this Case

The only ground asserted by petitioners is an alleged conflict with other decisions of this Court and the courts of appeals. Pet. at 4-7. There is neither a conflict nor any other compelling reason to hear this diversity case.

To constitute a conflict, "the conflict relied on normally must be direct . . . [and] substantially indistinguishable." *See* ROBERT L. STERN, EUGENE GRESSMAN, & STEPHEN M. SHAPIRO, SUPREME COURT PRACTICE § 6.31(a), at 374 (6th ed. 1986).

The cases cited in the petition hold that there must be a motion for summary judgment; they do not address whether a party can join in another party's motion. Accordingly, the unpublished opinion of the Fifth Circuit does not conflict with the cited decisions.

II. Summary Judgment Was Proper

State Farm relies upon, and incorporates, the opinion of the Fifth Circuit and of the district court, which are reprinted as Appendix A and Supplemental Appendix C to the Petition for Writ of Certiorari.

CONCLUSION

The Supreme Court should deny the writ. The respondents also ask for all other relief to which this Court may find them entitled.

Respectfully submitted,

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